

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

MICHAEL L. SMITH	§	
VS.	§	CIVIL ACTION NO. 1:06-CV-635
DIRECTOR, TDCJ-CID	§	

MEMORANDUM OPINION REGARDING TRANSFER

Petitioner Michael L. Smith, an inmate confined at the Conally Unit of the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se*, brings this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

The above-styled action was referred to the undersigned magistrate judge pursuant to 28 U.S.C. § 636 and the Local Rules for the Assignment of Duties to the United States Magistrate Judge for findings of fact, conclusions of law, and recommendations for the disposition of the case.

Discussion

Title 28 U.S.C. § 2254(a) allows a district court to “entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a). A state prisoner is required to file his federal petition for writ of habeas corpus in either the district where the prisoner is incarcerated or the district where the prisoner was convicted and sentenced. 28 U.S.C. § 2241(d). Although both district courts have jurisdiction to entertain the application, “[t]he district court for the district wherein such an application is filed in

the exercise of its discretion and in furtherance of justice may transfer the application to the other district court for hearing and determination.” *Id.*

Petitioner filed this petition in the Beaumont Division of the Eastern District of Texas. However, petitioner was convicted and sentenced in Lamar County which is located in the Sherman Division.

The court has considered the circumstances and has determined that the interest of justice would best be served if this petition were transferred to the division where petitioner was convicted and sentenced. Therefore, the petition should be transferred to the Sherman Division of the Eastern District of Texas for hearing and determination. An order transferring the case will be entered by the undersigned.

SIGNED this 19 day of October, 2006.



KEITH F. GIBLIN
UNITED STATES MAGISTRATE JUDGE